AUTORITÉ DES MARCHÉS FINANCIERS

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Keynote speech by Robert Ophèle, AMF Chairman - AFME's 5th Annual European Compliance and Legal Virtual Conference – 7 October 2021

Check against delivery

In the EU, as in the UK or in the US, many regulations are currently under review and some new regulations are also under discussion. It is fair to say that the agenda is somewhat overcrowded and the French EU Presidency next year will be spoilt for choice when picking its priority.

In our field, we will have MICA and the DLT Pilot Regime, AIFMD and ELTIF, MiFID-MiFIR. I will focus on this last package, which may be already on your radar more than the others and which, to some extent, mirrors the Wholesale Markets Review recently launched by HM Treasury in the UK.

Actually, some pressing issues have already been treated in the Capital Market Recovery Package earlier this year, notably position limits for commodity derivatives. Others are still pending, be it the buy-in regime in the settlement discipline framework, Open Access between market infrastructures or Pension schemes' exemption from mandatory central clearing. I will however focus today's speech on more structural issues, which could - and some of them should - be covered in the MiFIR/MiFID review; many have been discussed in numerous recent ESMA reports. Due to the complexity of the issues and thanks to the degree of expertise of today's audience, I will just refer to them and jump to offering some proposals.

Let’s start with transparency matters.

The review of the transparency framework lies at the crossroads of many issues: which securities are liquid, what are technical or non price-forming trades, what is addressable liquidity? And, at the end of the day, what value do systematic internalisers add? What a consolidated tape can add.

Answers to these questions are probably different for equity and non-equity instruments.

Not surprisingly, they have triggered heated discussions in the financial industry community and, I must admit that discussion has also been lively in regulatory circles. The views I will now share are mine alone.

Despite some nuances, I do believe that there are nevertheless some elements of consensus:

- Although transparency has increased for some instruments, in particular, those previously outside the scope of MiFID I, the overall objective of MiFID II / MiFIR to promote a robust price formation process via enhanced market transparency has not been fully achieved; the situation probably is worse for bonds, where many market participants consider that here, with the implementation of MiFID II, transparency has in fact decreased.
- The system is overly complex and data quality is insufficient.

How to increase the efficiency of our markets?

Regarding equity instruments, I would advocate a drastic simplification of the framework by:

- Removing the reference price and the negotiated trade waivers for liquid and illiquid instruments and just keep the waivers for negotiated trades of a technical nature and, obviously for Large-in-scale orders and orders held in an order management facility. Combined waivers would therefore no longer be relevant.
- Abandoning completely the Double Volume Cap regime that would in any case become pointless thanks to the simplification of the waivers.
- Limiting trading via systematic internalisers in shares to transactions above the pre-trade large-in-scale threshold.

- Promoting a real time post-trade consolidated tape for equities.

I have carefully reviewed both the numerous answers to the numerous consultations launched on these issues and the numerous contributions made by different stakeholders, including AFME. I can understand the rationale behind the diverging analysis and, to some extent, the reluctance to make major changes in a framework that actually does not work that badly.

Nevertheless, I do believe that only orders of a relevant size deserve the protection of a transparency waiver and that changes are easily manageable when they simplify the framework.

Furthermore I observe that the alternative option, which could basically be to limit the negotiated trade waiver to trades above a new threshold to be determined and to require SIs to be more transparent in their quoting activities would add a further degree of complexity to the framework.

Whatever this discussion’s outcome, data quality must be improved. Oxera made a clear case in its report prepared for AFME and I fully appreciate its sub-title *“the importance of utilizing accurate data for assessing equity market structure”*. Since security regulators are not blind and actually use this data, we are fully aware of its limitations. Improving data quality is therefore a clear priority, hence we do believe that, based on the consultation on the review of RTS1, which by the way closed just a few days ago, we could adapt the flagging requirements with more precise definitions and with more relevant flags. This would be a decisive step from a data quality perspective. I do hope that this could be implemented as of January 1st 2023.

Regarding the consolidated tape for equities, mandatorily free-of-charge contribution by trading venues and APAs, and the removal of the requirement to provide post trade data free of charge after 15 minutes would be game changers. An appropriate revenue sharing model and a strong governance framework would need to be established. Business models of different market participants should not be jeopardised - but due to latency issues, it will not be detrimental to the colocation model - and governance should insure transparency, appropriate management of conflicts of interest and continuity of service.

We should not fool our-selves. The consolidated tape is not the silver bullet, but by starting with post-trade and, with the timely addition of pre-trade data, this would facilitate best execution, to some extent narrow the competitive gap between large and small market players, marginally reduce the cost of data, concur positively with the price formation mechanism, facilitate the valuation of assets and palpably illustrate CMU.

However, the bond market is a very different case.

Coming back to the consolidated tape story, it is striking that many market participants and public authorities are indeed prioritising consolidating fixed income data. The underlying rationale of such a priority is clear: bond markets are far less transparent than equity markets; a very large proportion of trades is executed OTC without standardisation and transparency requirements are loose.

Taking this feature of the market into account, developing a consolidated tape based on the current transparency requirements would be of limited benefit. I suspect also that for some of the proponents of putting the “bond tape first”, this may be a way of postponing the equity tape sine die.

Actually, before setting about to develop such a tape, we should first review the transparency framework.

While the pre-trade transparency framework is relevant, it is the post-trade framework that is key for bonds.

So, what could be done? Here again I would advocate simplification:

- Abandoning the size specific to the instrument -SSTI- waiver.
- Broadening the perimeter of the liquid instruments by jumping immediately to Stage 4 of the liquidity determination process as foreseen by RTS2.
- Requesting publication of post-trade information as closely as possible to real-time with volume masked for illiquid instruments only and LIS transaction with a deferral of the volume after a short standardised period of time covering both private and public paper, no longer with a national option.

Obviously due the specific and highly competitive nature of the bond market - and let’s not forget, we have a trading obligation for equities and derivatives, whereas there is no bond trading obligation - due consideration should be given to possible unintended consequences. Nevertheless improving transparency while preserving the legitimate interests of liquidity providers can only boost the liquidity and the attractiveness of our markets.

The MiFID-MiFIR review should also address other eventually more pressing issues. Let me just briefly mention some of them.

- Sorry, to yet again mention the territorial approach. Third-country branches of EU firms should be allowed to trade with third-country counterparts according to the regulation of their host location and third-country firms' branches in the EU should fully comply with EU regulation.

- Only very minor adjustments are proposed by ESMA regarding the SME gross market framework. Allow me just to mention that I do believe that the 200 M€ market capitalisation threshold which is currently in the regulation appears to be largely outdated. Taking a CMU perspective, a threshold increased to 1 billion€ would still respect the standard regulated market perimeter of a minimum of 1 000 companies.

- Payment for order flow (PFOF) issue is indirectly tackled by the current regulation through the best execution filter. Some market participants consider that PFOF could be compatible with best execution. This is debatable but, in the absence of a single supervisor and with 27 competent national authorities, I am strongly inclined to favour the clarity of a ban.

- Finally, on Direct Electronic Access, DEA, putting more emphasis on the responsibility of the DEA provider and deleting the authorisation requirement as an investment firm for a DEA user only trading on its own account is unanimously supported.

Let's wait and see how the Commission's proposal reads when tabled. One thing is for sure: it will be the starting point of a hectic process between the EU co-legislators and will provide us with many opportunities to further discuss these issues.

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